

77-32-303 Standard for court to appoint noncontracting attorney or order the provision of defense resources -- Hearing.

- (1) If a county or municipality has contracted or otherwise provided for a defense services provider, the court may not appoint a noncontracting attorney under this part, Section 78B-1-151, or Rule 15, Utah Rules of Criminal Procedure, unless the court:
 - (a) conducts a hearing with proper notice to the county clerk or municipal recorder, with a copy of the notice provided to the prosecutor, to consider the authorization or designation of a noncontract attorney; and
 - (b) makes a finding that there is a compelling reason to authorize or designate a noncontracting attorney for the indigent defendant.
- (2) Except as provided in Subsection (3), if a county or municipality has contracted or otherwise provided for a defense services provider, the court may not order under this part, Section 78B-1-151, or Rule 15, Utah Rules of Criminal Procedure, and the county or municipality may not provide defense resources for a defendant who has retained private counsel.
- (3) The court may order, and the county or municipality may provide, defense resources to a defendant represented by private counsel only if:
 - (a) the court conducts a hearing with proper notice to the county clerk or municipal recorder, with a copy of the notice provided to the prosecutor;
 - (b) the court conducts an in camera review of the defense contract, a full accounting of the defense retainer, anticipated costs of defense resources and other relevant defense records and finds by clear and convincing evidence all of the following:
 - (i) the defendant would be prejudiced by the substitution of a contracted defense services provider and any prejudice cannot be remedied by a continuance or other alternative means;
 - (ii) at the time of retention of private counsel, the defendant and attorney entered into a written contract which provided that the defendant had the means to pay for fees and defense resources;
 - (iii) there has been an unforeseen change in circumstances which requires defense resources beyond the defendant's ability to pay; and
 - (iv) all of the above representations are made in good faith and are not calculated to allow the defendant or defense attorney to avoid the requirements of this section.
- (4) The court may not order the defense services provider to act as co-counsel with a privately retained legal counsel as a means of circumventing the requirements of this section.

Amended by Chapter 180, 2012 General Session